HSBC

January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. & Constitution Ave., NW
Washington, DC 20551

**Re: Comments for Docket Nos. R-1167, R-1168, R-1169, R-1170 and R-1171
Proposed Disclosure Rules Under
Consumer Protection Regulations**

Dear Ms. Johnson:

HSBC Bank USA appreciates the opportunity to comment on the proposed disclosure rules under the five consumer protection regulations: B (Equal Credit Opportunity); E (Electronic Fund Transfers); M (Consumer Leasing); Z (Truth in Lending); and DD (Truth in Savings)

The proposed rules attempt to establish a uniform standard for consumer disclosures which are required to be “clear and conspicuous”. While there is currently no uniform standard for “clear and conspicuous” disclosures, we believe that the requirements for such disclosures are adequately addressed in each of the regulations as they exist today. In many cases, model disclosures have been provided by the Federal Reserve Board. These models have been followed by creditors nationwide, are familiar to consumers and have not been identified as inadequate.

While we appreciate the Board’s efforts to create consistency among the regulations, we must oppose the proposed rules for the reasons set forth below.

1. Regulation P is not an appropriate model to apply to all consumer protection guidelines.

The “clear and conspicuous” standard in Regulation P is relatively new and untested. In addition, the federal banking agencies are considering changes to the privacy notice and are currently seeking comment on the format and language used in the privacy notices. It is not appropriate to use Regulation P as the basis for a major revision to other consumer regulations when the disclosure format provided in Regulation P is still under review.

Regulation P requires a single stand-alone disclosure of privacy policies. The disclosures in Regulation P are distinguishable from disclosures required under other consumer regulations in that they are not tailored to a particular customer, product or transaction. The Regulation P "clear and conspicuous" standard has not been tested in the context of transactions that involve numerous integrated documents and transaction-specific disclosures, such as application and account disclosures, periodic statements, account agreements and advertisements. The proposal fails to account for these variations because it is based on a standard that was not drafted with these variations and complexities in mind. It is therefore not an appropriate basis for revising the "clear and conspicuous" definition in other consumer regulations.

2. <u>The proposed regulations cannot be reconciled with existing models and guidance.</u>

Language and forms that have become accepted standards, which are highly recognizable by consumers, may no longer meet the standards under the proposal. It will be necessary to review every document, and to create new language, to ensure that the tests of "reasonably understandable" and "designed to call attention to the nature and significance of the information" have been met. The latter test, in particular, will be extremely difficult if not impossible to address. Many consumer disclosures are required to be disclosed in tabular format, or with the use of terminology such as "APR" or "finance charge" and do not lend themselves to clear, concise sentences or avoidance of technical terms. When dealing with multiple and complex disclosures, many of which are integrated with other information, physical separation of required disclosures may be impossible. Attempts to otherwise highlight disclosures which must be provided in the context of a contract, such as a revolving credit agreement, may disrupt the flow and make the overall content of the agreement more difficult to understand.

The "designed to call attention" test is an open invitation to massive consumer litigation, even though phrased as an example of disclosures meeting the "clear and conspicuous" standard. It will simply encourage challenges to whether a financial institution's disclosure forms adequately call attention to a particular disclosure. The current regulatory disclosure requirements, and the disclosures financial institutions have developed to comply, have been tested by years of litigation history. This history will be completely wiped out if new standards are adopted. Financial institutions will face new litigation risks as the revised standards are tested by the plaintiff's bar.

3. <u>The proposed Regulation will place significant financial and operational burdens on financial institutions with little benefit to consumers.</u>

The proposed Regulations will impact virtually every consumer communication made by financial institutions and will require a comprehensive review of each and every document. To avoid, or at least minimize, potential liability, it will be necessary to widen margins, increase type size and revise language out of an abundance of caution, even though the previous method of disclosure had never been considered inadequate. We conservatively estimate the cost of the review and revision process at approximately $1 million. This figure will increase if it becomes necessary to continually revise these forms as a result of litigation arising from the new standards.

The adoption of new disclosure standards is likely to create inconsistency in consumer disclosure, as financial institutions rush to review and revise well-established disclosure formats in an attempt to address the new standards. We believe that the existing model forms, developed over the last twenty years, already call attention to the most significant disclosures. These forms, as well as other common means of disclosure, are familiar to consumers and have not been a subject of concern to consumers or consumer groups. We are not aware of any defect with the current standards which justify the massive form revisions and cost which will result from this proposal The inconsistency and rearranging of familiar forms that will result from this proposal will make consumer disclosures more complex and harder to understand and will not enhance consumer awareness. It will also make it more difficult for consumers to compare product offers from different financial institutions.

Conclusion

We do not believe that the proposed standards will provide financial institutions with a safe harbor since the standards are vague and unworkable for transaction-specific disclosures. The existing well-established disclosure rules and model forms provide adequate, familiar and tested disclosures. The massive changes being proposed are simply unnecessary absent identification of significant defects.

We urge the Board to withdraw these proposed rules. If the proposed rules are adopted, we urge the Board to give financial institutions more than six months to implement these significant changes.

We appreciate this opportunity to submit comments on the proposal. If you should have any questions or comments regarding this letter, please feel free to call me at the number listed below.

Sincerely,

Patricia N. Grace
Counsel
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